



**BOARD OF EXAMINERS FOR LAND SURVEYORS  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243  
615-741-1831**

**Board Meeting Minutes for January 26, 2017  
First Floor Conference Room 1-B  
Davy Crockett Tower**

The Tennessee Board of Examiners for Land Surveyors met on January 26, 2017 in the first floor conference room 1-A of Davy Crockett Tower in Nashville, Tennessee.

**BOARD MEMBERS PRESENT:** Jay Caughman, Tim Lingerfelt, Betsy Sumerford, Galyon Northcutt.

**BOARD MEMBERS ABSENT:** None.

**STAFF MEMBERS PRESENT:** Roxana Gumucio, Laura Martin, Glenn Kopchak, Shilina Brown, Lindsey Shepard.

**ROLL CALL/NOTICE OF MEETING**

Mr. Caughman called the meeting to order at 9:06 AM. He read the notice of the meeting into the record as follows: "Notice of the January 26, 2017 meeting of the Board of Examiners for Land Surveyors was posted to the Board of Examiners for Land Surveyor's website on January 19, 2017."

**AGENDA**

Mr. Caughman proposed adopting the day's agenda as written, with the option of moving items around as needed to facilitate those in attendance who wished to address the Board. Mr. Northcutt put forth a motion in agreement, which Ms. Sumerford seconded. The motion passed unanimously.

**MINUTES**

The Board then reviewed the minutes from their previous two meetings. The first set of minutes was for the Board's regularly scheduled meeting on October 27, 2016. Mr. Northcutt motioned to approve the minutes as written, which was seconded by Mr. Lingerfelt. The motion passed unanimously. The second set of minutes came from a meeting the Board held by teleconference in November to approve a request for proposal regarding the state specific exam. In reviewing those minutes, Mr. Lingerfelt noticed a line that made reference to another program, most likely a typo. He recommended that the Board adopt the minutes with the removal of the typo. Ms. Sumerford seconded, and the motion passed unanimously.

**EDUCATION REPORT**

At this point Mr. Caughman took up the education report in order to accommodate Mr. William Thompson, an education provider from Crossville, TN. The Board had reviewed a number of Mr. Thompson's courses at their previous meeting, and came to the conclusion on several of the courses that they could not approve the amount of credit Mr. Thompson had requested without additional

information. Mr. Thompson provided additional documentation relating to the courses in question and appeared before the Board to answer any questions they might have. He provided the Board with a brief description of his background as an instructor and a brief of synopsis of how some of his classes were conducted. The Board agreed to take Mr. Thompson's statements into consideration when granting the courses approval, but still expressed concern about the amount of credit. They agreed to take the issue up later in the meeting and allow Mr. Thompson to return to Crossville.

The Board then reviewed the remaining classes that had been recommended for approval by their education panel. Finding no other issues, Mr. Lingerfelt made a motion to approve. Mr. Northcutt seconded, and the motion passed unanimously.

## **LEGAL REPORT**

At the request of Director Gumucio, the Board then moved forward to the legal report. Board counsel Laura Martin introduced Shilina Brown and Lindsey Shepard who would be preparing the legal report as part of the legal department's restructuring discussed at the previous meeting.

**1. Case No.: 2016065791 (LS)**  
*Complaint History:* None

This complaint was filed by a consumer who alleges Respondent, accompanied by two other men, trespassed on her property, used profanity, and refused to show identification. The three men appeared on her property on three separate occasions. Complainant called the police all three times.

In response, Respondent stated that he was hired by Complainant's neighbor to survey the disputed boundary between Complainant's property and the neighbor's. The two men who accompanied Respondent were Respondent's attorney and an electric company employee. All three submitted affidavits denying Complainant's allegations.

**Recommendation:** Close pursuant to Tenn. Code Ann. § 62-18-124(a).

**BOARD DECISION:** Letter to the Respondent & close.

**2. Case No.: 2016067871 (LS)**  
*Complaint History:* 200802082 closed with \$500 civil penalty for public statement violation (Tenn. Comp. R & Regs. 0820-04-.04)  
200900779 closed with a Letter of Warning for public statement violation (Tenn. Comp. R & Regs. 0820-04-.04)

This complaint was filed by a consumer who alleges Respondent failed to timely return his phone calls. Specifically, Complainant alleges that he left multiple detailed messages with Respondent's staff over a six (6) week period and that Respondent only called him back once.

In response, the Respondent stated Complainant first left a message on Respondent's phone offering the job on September 16, 2016. Respondent did not actually speak to Complainant and agree to do the work until October 3, 2016. They did not discuss a deadline for completion. Respondent then took the next two weeks off from work while his child was home for fall break. On October 26, 2016, Complainant changed the requirements of the survey and asked Respondent to re-draw the plat. Respondent never accepted the request to re-draw. Complainant hired a new land surveyor on November 10, 2016.

**Recommendation:** Close.

**BOARD DECISION:** Concur.

**3. Case No.: 2016070211 (LS)**

Complaint History: None

This complaint was filed by another land surveyor who alleges Respondent signed and certified a Final Subdivision Plat with an engineer seal. Respondent admitted to the allegation, stating that he is both a licensed engineer and licensed land surveyor. He claims he accidentally used the wrong seal.

Respondent certified the plat on June 1, 2016. On November 16, 2016, the city notified Respondent of his error. Respondent recorded a corrected plat with the appropriate seal the following day. The subdivision's developer is in the process of issuing corrected deeds to individuals who purchased homes before Respondent filed a corrected plat. Respondent claims that that his error was unintentional, resulted in no harm to the public, and did not cause him to incur economic benefit.

**Recommendation:** Close.

**BOARD DECISION:** Concur (Board member, Tim Lingerfelt, recused himself from reviewing and voting on this complaint.)

**4. Case No.: 2016061091 (SB)**

Complaint History: 200312488 - Dismissed

This complaint was filed by a consumer and alleged that the Respondent did not use the deed for his survey and the three drawings prepared by the Respondent are incorrect, incomplete, and misleading. The Complainant has a quitclaim deed for property that she and her now deceased husband own. The Respondent provided a response and stated that this complaint is stemming from a survey that was done 17 years ago. The Respondent indicates the Complainant is involved in lawsuit with the landowner of this parcel of property. The Respondent provided his professional opinion for the survey and has relied on evidence found in the field and other information all of which are within reason.

**Recommendation:** Close

**BOARD DECISION:** Concur

**5. Case No.: 2016068971 (SB)**

Complaint History: None

This complaint was filed by a Complainant and alleged that the Respondent did not properly conduct a survey for property owned by the Complainant because he did not use a title search to conduct the survey. Complainant states the property was listed in the older titles at 7.54 acres and the Respondent's survey determined it was 6.08 acres.

The Respondent provided a response and stated that he conducted a survey of the property at the request of the previous property owners in 2009 and used the deeds and the deeds of all adjoining

properties to complete the survey. The new deed was filed on October 28, 2009 and calls for 6.08 acres more or less and refers to the recorded plat of the survey completed by the Respondent.

**Recommendation:** Close.

**BOARD DECISION:** Concur.

### CASES FOR REPRESENT

- Case No.: 20150217461 (SB)**  
*Complaint History:* 20100363 - Dismissed

This complaint was received by the Complainants against the Respondent after they had had obtained a civil judgment of \$10,000 against landowners who used Respondent to survey to determine the boundary lines between the Complainant's property and the adjoining property. Complainant claimed lumber had been harvested from land he claimed belonged to him by adverse possession. The Complainant states that the Respondent incorrectly determined boundary lines in his survey resulting in timber on his land being harvested. The Complainant alleges the Respondent ignored the reference to the stake of a fence (built 40 years ago) contained in Complainant's deed and instead used tax maps to determine the boundary. The lawsuit filed by the Complainant was an adverse possession and boundary line claim and not a lawsuit against the Respondent and there was no finding the Respondent's used tax maps or the survey was incorrect.

**Recommendation: Authorize formal and send a Consent Order with a civil penalty in the amount of \$1,000 to resolve the complaint. \$1,000 for misconduct in the practice of land surveying in violation of 62-18-116(B).**

**DECISION: Authorize formal and send a Consent Order with civil penalty in the amount of \$1,000 in addition to a Voluntary Suspension of the license until such time as Respondent shows proof that he has attended 16 hours of continuing education courses in "Boundary Surveys and/or Boundary Law" from the approved list of courses and providers as approved by the Board. Also, issue a letter to the Register of Deeds in Respondent's home county informed them of Respondent's Suspension if/when Respondent signs the Consent Order.**

**Update and new recommendation:** This matter is being re-presented due to the fact that though there was a court order in the civil proceeding related to this matter, it was not sent per the normal operating procedures to the Board expert reviewer for an opinion. Accordingly, it is Legal's recommendation for the Board to wait until proceeding with its previous decision until the independent review can be conducted and that recommendation given.

**Decision: SEND TO EXPERT REVIEW PER NORMAL OPERATING PROCEDURES.**

**Additional Facts and New Recommendation: This matter was sent to a reviewer.**

Complaint filed by a consumer alleging that Respondent did not conduct the survey properly and failed to use information in the Complainant's deed to determine property lines and relied on tax maps, failed to perform proper research and did not contact any adjoining property owners on a survey. The complaint alleges that Respondent's survey indicated a property to be 8.5 acres, Complainant alleges that

a survey conducted inaccurately reflects the acreage of the property following the acquisition of land beyond the fence.

The Respondent provided a response stating he was hired by the adjoining property owners of the Complainant to resolve their true boundary so they could cut timber on their property. The Respondent stated that he was told there was a neighbor to the east they were concerned about which is the Complainant in this matter. The Respondent was aware that he needed to make sure that he spoke with this adjoining landowner. The Respondent stated he reviewed the deeds and explained that there was only a small amount of surveying performed on their neighbors' properties and the boundary lines and it may be difficult to resolve since the corners and lines could be someone else's corners and lines. He stated that he was aware that would have to confirm the line locations with all the deeds of record. The Respondent and his team conducted field work and the survey crew spoke to all the adjoining landowners and discussed each of their specific property lines. Since, the Complainant had purchased land from the current property owner's grandparents, he was contacted directly and specifically asked about what he knew about his boundary line. He stated that he did not know about any property lines and never offered any information or help in determining the line. The Respondent gave all this contact information, including a business card to the Complainant to contact him at any time if he has information, questions or concerns about the surveying being done. Respondent's survey crew made several trips to the property and saw the Complainant on at least two additional occasions and at no time did the Complainant say he had additional information or details about the boundary location. There were also ambiguities in the deeds to the west of the subject property being surveyed by the Respondent. The family owning the property lived in Illinois and the Respondent spoke to them about the boundary line and they had very little knowledge of the boundary but appreciated the efforts to contact them and provided them with sketches of the Respondent's work and evidence recovered so they could be fully informed about the Respondent's work. Another landowner on an adjoining tract of land was also contacted and asked to provide any information that he could and he stated that he did not have any idea where the boundary was located and he stated that he trusted the Respondent to do the best the Respondent could do in this situation since he had no knowledge whatsoever about the corner marker or the extent of the boundary. The Respondent used the deed calls and old fence evidence to fit the line as best he could and also used a survey done by another surveyor of an adjoining landowner to the east to match it within acceptable tolerance. The Respondent stated he did use GPS information. The Respondent did locate a buggy axle at a fence corner that served as the northwest corner of an adjoining lot. There was also a portion of a fence that extended west from this buggy axle down the hill to the west. The fence was not in good condition and there was no mention of a fence in the description of Complainant's deed "Beginning at a stake in a hollow. . ." The Respondent stated that he had no information the Complainant considered the fence as the boundary line and he never shared such information. The fence row was not visible only pieces of a fence row. The deed had vague calls and had to look to many other sources to determine the boundary line. There was no other stake and only a broken down fence that meandered and did not appear to be a line fence. The axle was near the edge of the hill. The Complainant's deed did not contain any measurements to verify the location of the boundary. As a result, the Respondent concluded that the vagueness, errors and ambiguities contained in the description made it difficult to use to recover to the boundary location. The Complainant had been given several months and multiple opportunities to provide testimony concerning his boundary line. Additionally, when the survey was completed and the survey crew was flagging the boundary line, the Complainant came over to the corner area that was being marked to ask what they were doing and the crew explained it to him in detail and he made no argument or comment concerning their work. The line was brightly marked for approximately another 14 days before the plat and description was delivered to the client and the Complainant never contacted the Respondent concerning the boundary lines or

disputing the lines. A month later, after the timber had been cleared the Complainant suddenly called the timber cutter and stated that he had cleared his trees, however, that was not the case since the Respondent had defined the boundary lines and the timber cutter just followed the boundary lines determined by the Respondent. The following day the Respondent received a telephone call from the Complainant concerning the harvesting of the trees and stated the location of their property line was different than the survey. The Complainant stated that the Respondent ignored him and accused the survey crew of lying. The Respondent stated that following the filing of suit, he was contacted by a surveyor that stated that he was hired to survey the location of land that the Complainant was going to claim by adverse possession and the surveyor stated that he was not trying to dispute the Respondent's survey. The Respondent was subpoenaed as a witness, not as a defendant involving his client and the Complainant, at the trial of the lawsuit filed by the Complainant. The Respondent's client was sued and the attorney for the client stated that the survey was not being challenged and the lawsuit was an adverse possession claim. The Respondent states he did not use tax maps to survey the property. The Respondent was never aware or told that fence was a boundary line and looked at many other sources to determine the boundary line. The Respondent states that he used the deeds of record, the physical evidence recovered on the ground, personal testimony of landowners to resolve the boundary line location to the best of his ability and made every possible effort to contact the adjacent landowners in the areas as required by law. The Complainant's own expert testified that there was an error in the calls on the Complainant's deed in regard to the "northeast" directional call.

This case was sent to an expert reviewer. The reviewer found that Respondent violated the following rules:

Tenn. Comp. R. & Regs. 0820-03-.07(1)(b)(7) Survey Types and Requirements

The certification of survey does not indicate actual ratio of precision of the unadjusted survey.

**Recommendation: Close. The certification of survey does indicate the actual ratio of precision of the unadjusted survey.**

**BOARD DECISION:** Concur.

The Board then turned its attention to Chapter 0820-01 and the procedural revisions they had worked on with counsel. Laura Martin had prepared a reworded version of the chapter to allow for recent changes to computer based testing for the PS exam, waiving prior approval for the FS exam, and for possible changes to the TS exam administration that could come from the request for proposal discussed at previous meetings. Ms. Martin asked for the Board to consider voting to move these edits forward, and if deemed necessary by the legislature, create a rule-making hearing. Ms. Sumerford put a motion forward to accept counsel's recommendation. This was seconded by Mr. Lingerfelt. Ms. Martin asked for an official vote by roll call, which was conducted by Ms. Gumucio. The motion passed unanimously.

Finally, Mr. Caughman brought the Board's attention to a draft policy statement Ms. Martin had prepared regarding unmanned aerial vehicles, also known as drones. This was a topic the Board had been working on at several of its previous meetings. So as not to interfere with existing local, state, and federal regulations regarding the use of drones, the Board had agreed to adopt a policy statement as addendum to their existing law. Ms. Martin recommended that the Board should review the draft and e-mail any notes and revisions directly to her.

## **NEW BUSINESS**

Mr. Caughman recognized Bruce McClellan, on hand to deliver a report from the Tennessee Association of Professional Surveyors. Mr. McClellan brought the results of an informal poll conducted among TAPS membership on which license title they preferred: professional land surveyor or registered land surveyor. Mr. McClellan said the membership preferred professional land surveyor, and specifically the abbreviation of PLS, as is currently used by the department. Mr. McClellan informed the board about a "Day on the Hill" the organization had prepared to allow surveyors to meet their local legislators and discuss relevant initiatives. Mr. McClellan also proposed a Q&A session with department staff to help answer some of the questions the membership had regarding the recent changes in examination and licensure. Finally, he threw his support behind the Board's recent investigation of unlicensed activity.

Mr. Caughman then turned the Board's attention to NCEES, specifically to its own Tim Lingerfelt's candidacy for Assistant Vice President of the Southern Zone. Mr. Lingerfelt had been nominated earlier in the year for this important position, and an election was set for the zone interim meeting at the end of April. Mr. Caughman recognized Mr. Lingerfelt's efforts working with the NCEES through the years in roles on the exam and awards committees, and looked forward to Tennessee potentially taking even more of an active role in the Council with this election. Mr. Lingerfelt noted that according to his research 1938 was the last time someone from the state had held a role as officer in the organization.

The Board then took an hour's break for lunch, and resumed at 1:03 PM.

Upon return the Board reviewed its current application for Professional Land Surveyor-In-Training. Having recently decided to allow NCEES to handle the registration and approval for the Fundamentals of Surveying exam, changes would need to be made to the form and structure of the application. The Board also noticed several items that needed to be reworked or omitted to better streamline the application process.

The Board then went back to the courses Mr. Thompson had presented and assigned the PDHs they felt were appropriate. They made sure that Mr. Thompson would be notified of their decisions by Board staff.

At this point the Board reviewed all applications for licensure it had received since their previous meeting. They noted their decisions to Board staff so that the applicants could be contacted to ensure that those that had been approved had a chance to sit for the state specific exam was scheduled for the first week of March.

Finally the Board agreed to assign itself PDHs for the day's business. By Mr. Caughman's count the Board had done five hours of work, and Mr. Northcutt made a motion to award five PDHs. Mr. Lingerfelt seconded the motion, and it passed unanimously. There being no other new business, Mr. Caughman concluded the meeting at 3:20 PM.